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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

M. B. LUCK, CLERK

LAWRENCE E. WILSON, Warden,)	
)	
Respondent-Appellant,)	
)	
vs.)	No. 22040
)	
WILLIE WADE, JR.,)	
)	
Petitioner-Appellee.)	
)	
)	

APPELLANT'S SUPPLEMENTAL MEMORANDUM

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APPELLANT'S SUPPLEMENTAL MEMORANDUM

On October 23, 1967, the United States Supreme Court decided Roberts v. LaVallee, No. 193 Misc., 36 U.S. L. Week 3171. Although the case is readily distinguishable from the instant case, appellant feels it should be called to this Court's attention because it relates to an indigent state prisoner's constitutional right to a free transcript and because it discusses several cases cited by both parties in the instant appeal.

The facts of Roberts are stated in the Supreme Court's per curiam opinion. When Roberts' case was called for trial in a New York state court on charges of robbery, larceny and assault, he asked to be furnished

a free transcript of a prior preliminary hearing at which the major state witnesses had testified. The trial court declined to furnish this transcript without cost.

Citing Draper v. Washington, 372 U.S. 487 (1963); Griffin v. Illinois, 351 U.S. 12 (1956); Long v. District Court of Iowa, 385 U.S. 192 (1966); and Lane v. Brown, 372 U.S. 477 (1963), the Supreme Court found this procedure a denial of equal protection of the laws.

The Roberts case does not support the order of the district court in the instant case for the same reasons that Griffin, Long, and Lane are inapposite. Draper and Griffin each involved an indigent state prisoner's right to a free record on direct appeal from a judgment of conviction. Both Long and Lane involved an indigent's right to a free record on appeal from the denial of collateral relief. Each of the above four cases involved direct appeals, and in each case the record requested was of the proceedings from which the appeal was taken. Thus, in Long and Lane the free transcripts involved only the transcripts of proceedings on collateral attack, and not the original proceedings leading to the judgment of conviction which was collaterally attacked. Thus, Draper, Griffin, Long, and Lane, all stand for the proposition

that on appeal an indigent state prisoner is entitled to a free transcript of the proceedings from which the appeal is taken.


The Roberts case goes back several steps from the above cases and articulates an indigent's right to a transcript of his preliminary hearing to be used to prepare for trial. Roberts' interest in the transcript of a prior preliminary hearing is closely related to pretrial discovery of prior statements made by persons who may be witnesses for the prosecution at trial. The policy considerations relevant at this crucial stage of the proceedings are vastly different from those involved in the instant case. Thus, at the time he requested a transcript of his preliminary examination, Roberts stood as one who is presumptively innocent and who would use the requested record to defend himself against the criminal charges. Appellee's status is the direct opposite. Appellee seeks a free transcript of his trial proceedings for no other announced purpose than to fish for grounds upon which he may collaterally attack a presumptively valid judgment of conviction. The Roberts case does no more than to add a single link to the chain of proceedings on direct attack of criminal charges wherein an indigent must be provided, without cost, access to records which

may bear on the merits of the case. As is true of Draper, Long, Lane and Griffin, the Roberts case does not constitute authority for the proposition that every indigent state prisoner is entitled, as a matter of federal constitutional law, to a free transcript to be used for no other purpose than to engage in a fishing expedition in search of grounds to collaterally attack a presumptively valid judgment of conviction.

DATED: December 6, 1967

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